

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

C.R.P.No. 2201 of 1999(E)

AA.153/1997 of APPELLATE AUTHORITY (LR), ALAPPUZHA
SM.44/1993 of LAND TRIBUNAL, NEYYATTINKARA

REVN. PETITIONER/1ST RESPONDENT/APPLICANT:

S.VILASINI AMMA, D/o. MADHAVAN PILLAI,
AGED 51 YEARS, INCHAPPURA VEEDU,
AVADUTHURA, KOVALAM P.O., TRIVANDRUM.

BY ADV. SMT.SUMATHY DANDAPANI

RESPONDENTS/2ND RESPONDENT/APPELLANT/RESPONDENTS:

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1. K.KESAVA PILLAI,
GNARAVILA PUTHEN VEEDU,
AVADUTHURA,
KOVALAM P.O., TRIVANDRUM.
 2. B.RAJARAMAN NAIR, S/o. BHASKARA PILLAI,
RAMA VILAS, PACHALLOOR, TRIVANDRUM.
 3. THE STATE OF KERALA REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
TRIVANDRUM.

R3 BY GOVERNMENT PLEADER SRI.M.R.SABU
R2 SRI.M.RAJASEKHARAN NAYAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 22/03/2007, ALONG WITH RFA NO. 105 OF 2004, THE COURT
ON THE SAME DAY, PASSED THE FOLLOWING:

C.R.P.No. 2201 of 1999

:2:

ORDER ON C.M.P.Nos.4552 & 5398 OF 1999 IN C.R.P.No.2201 OF 1999

DISMISSED

22.03.2007

Sd/- M.N.KRISHNAN,JUDGE

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J
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C.R.P.No.2201 OF 1999
AND
R.F.A.No.105 OF 2004
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Dated this the 22nd day of March 2007

ORDER

The civil revision petition is preferred against the order of the Appellate Authority, Alappuzha in A.A 153 of 1997. The first appeal is preferred against the judgment and decree of the Subordinate Judges Court, Thiruvananthapuram. The connection between the Civil Revision Petitioner and the second respondent is on account of the fact that the revision petitioner through her predecessor in interest namely Sri.Madhavan Pillai, claim tenancy right with respect of 90.5 cents of land by virtue of an oral lease by Sri.Kesavan Pillai in favour of Madhavan Pillai. Therefore, the revision petitioner contends that as per the provisions of Kerala Land Reforms Act, she is entitled to fixity of tenure over the property and therefore any sale or transfer of property by some other persons will not affect her tenancy right or title over the property. On the other hand, the second respondent in the revision petition contends that Sri.Kesava Pillai had borrowed amounts from one Abdul Razaq for which a suit was filed by the said Razaq in the year 1976 and in pursuance of the execution of the decree 51 cents of property sold in court auction was purchased by Razaq himself

and later he had transferred it to the second respondent in the revision petition and thereby he had title and possession over the property.

2. Before the Land Tribunal, an order was passed in favour of the revision petitioner and in appeal it was reversed by the appellate authority. In the suit, the Civil court found that the plaintiff therein has valid right and possession over the property and therefore granted decree in favour of the plaintiff who is the second respondent in the C.R.P. before this court.

3. Now the entire matter depends upon the acceptability of the tenancy right set up by the revision petitioner in this case. The Land Tribunal while disposing of the matter held that there was a settlement deed executed by Sri.Madhavan Pillai and others in their family and this property was a subject matter and it is of the year 1959 and further the authorised officer inspected the property and came to the conclusion that the revision petitioner's family is in possession of the property from 1940 onwards and it also relied upon some basic tax receipts and ordered issuance of certificate of purchase in favour of the revision petitioner. In appeal the appellate authority found that Sri.Madhavan Pillai had raised a very specific contention in O.S.461/87 to the effect that he came in to possession of the property by virtue of a lease given by Sri.Kesavan Pillai in his favour in 1982 by virtue of an unregistered lease deed and thereby he is in possession of the

property and on his death it had devolved upon the present revision petitioner. So, Sri.Madhavan Pillai did not have a case that he was the tenant of the property from 1940 onwards. When it is so a person claiming under Sri.Madhavan Pillai cannot have a better claim. When Sri.Madhavan Pillai asserts that lease is the year 1982, the revision petitioner cannot canvas for the position that the lease was in the year 1940. Even she cannot raise such a plea I will consider the same as well. The Magnacarta of the case of the revision petitioner is Ext.A1. The Land Tribunal also relied on Ext.A1 settlement deed to show that Sri.Madhavan Pillai was in possession of the property at that point of time. A perusal of the schedule to the document would convincingly establish that these properties had never been the subject matter of the said settlement deed. So, Ext.A1 could not in any way lend support to the case of the revision petitioner. Then the next point argued by the learned counsel for the revision petitioner is that under the provisions of the Land Reforms Act an authorised officer's report is entitled to wait and unless there is something compelling to discard it, the courts are bound to give evidentiary value to the said report. There cannot be any dispute about that proposal. But at the same time, the report submitted by the authorised officer should have credence and should be based on some materials. How can a Revenue Inspector on a visit of the property come to the conclusion that a person is in possession of the property from 1940. There is

absolutely no scrap of paper produced by the revision petitioner or Sri.Madhavan Pillai to show they were in possession of the property at any point of time prior to the crucial date of 1.1.1970. On the other hand, Sri.Madhavan Pillai himself would submit a case before the civil court contenting that he is in possession of the property only by virtue of lease deed of year 1982. So the documentary evidence is not at all convincing and the report of the revenue inspector would not stand scrutiny of law. Therefore, the appellate authority was right in discarding the Revenue Inspectors report.

4. The brief history of the case also would reveal the same. There is no dispute that the property belonged to Kesava Pillai. The suit was filed against Sri.Kesava Pillai in 1976. Thereafter 51 cents of land was sold in court auction. Subsequently suits had been filed on account of the same. I am informed that the sale was confirmed and the purchaser was put in possession of the property through court and it is that purchaser who had assigned the property in favour of the second respondent in the civil revision petition. In order to entitle the person to get certificate of purchase under Section 72 K of the Act, the burden is upon him to prove that he was in possession of the property prior to 1.4.64 on the strength of a lease. When it is not proved she is not entitled to fixity of tenure. In this case even for her argument sake it is admitted that there is a lease in year 1982, the provisions of the Kerala Land Reforms Act , totally prohibits tenancy after

1.4.64 and on that account also the revision petitioner is not entitled to fixity of tenure. Therefore, the civil revision petition lacks merit and the order does not suffer from any illegality or irregularity and so it is dismissed.

Now, I will consider the question involved in the first appeal. The first appeal is preferred against the judgment of the Learned Subordinate Judge in O.S.132/1998. The plaintiff therein is the second respondent in the revision petition. He claims title to the property by virtue of a sale of the year 1993. He also gives a brief history of devolution of title and possession over the property. It is contented by the present revision petitioner who is the sole defendant in the suit that she is in possession of the property. The trial court on analysis of the materials in the form of Ext.A1 to A3 an evidence PW1 to PW4 came to a positive conclusion that plaintiff is entitled to injunction as he is in possession of the property. The learned Sub Judge also refers to the back history and the evidentiary value of the various documents including the judgment of the civil court rendered in A.S.33/92 which is of course a subject matter of second appeal S.A.926/01. The trial court was not prepared to accept lease of the year 1940 or 1982 and on perusal of the document came to the conclusion that the plaintiff therein has succeeded in proving possession over the property. That finding does not suffer from any illegality and further it is rendered on facts which was credit worthy and so the decree for injunction

granted by the court in that case also does not call for any interference. Therefore, the civil revision petition as well as the first appeal are dismissed directing the parties to bear their respective costs.

M.N.KRISHNAN,JUDGE

dvs